UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	**CRIM. NO. 01-25-B-S**
	)	
LAWRENCE MILTON CURTIS, JR.,	)	
	)	
Defendant	)	

RECOMMENDED DECISION

This matter is before the Court on defendant's Motion to Suppress (Docket No. 8). The motion raises four issues: (1) an alleged miscue in the property description in both the warrant and the affidavit; (2) an alleged impropriety in the execution of the warrant created by the presence of a federal officer at the time of the execution of a state court warrant; (3) an assertion that the warrant is facially deficient in that it does not set forth adequate probable cause; (4) a dispute about the validity of the inventory returned to the state court; and, finally (5) an allegation that the officers executing the warrant intentionally destroyed exculpatory evidence in the nature of a tape recording. After a preliminary telephone conference and based upon the affidavits then in the file, I determined that a limited evidentiary hearing was appropriate in this case, directed solely to the issues raised in ground five. That hearing was set for August 24, 2001. On the 24th, prior to the commencement of the hearing, the defendant's attorney indicated that as a result of her further research and investigation, including conversations with the government's witnesses at the courthouse that morning, she had determined that ground

five of the motion should be withdrawn. I granted her oral motion to withdraw ground five. No evidentiary hearing was held and therefore my proposed findings of fact are based upon the information contained within the four corners of the affidavit and the additional relevant undisputed facts set forth in the parties' memoranda. Based upon my review, I now recommend that the court **DENY** the motion to suppress.

Proposed Findings of Fact

Based upon the information contained within the four corners of the affidavit, Lawrence Curtis has a prior criminal record that includes a conviction for three counts of class A sexual assault on a minor in the 1980s. The affiant, Franklin County Deputy Sheriff Mark A. Cayer, has been involved in an ongoing investigation of alleged sexual abuse of minors by Curtis during the past several years. Between February 2, 2001 and February 19, 2001, Cayer spoke with several individuals who related tales of sexual abuse and also corroborated each other's version of certain events.

One interviewee (named in paragraph 8 of the affidavit), who was then 19 years old, stated that he has been involved in an ongoing sexual relationship with Curtis for the past six years. He also told the affiant on February 19, 2001, that Curtis had loaned him a forty-four hunting rifle during the past two hunting seasons. Both years Curtis brought the gun to the interviewee's home. The interviewee said he returned the gun to Curtis and that he has seen the gun at Curtis' home since the end of the last hunting season. He stated that Curtis claimed ownership of the gun.

Incorporating this information with information from other alleged child victims, state and local officers sought and obtained a state search warrant. No federal officer was involved in the pre-search investigation or in the issuance or execution of the search

warrant. Kenneth MacMaster, a detective with the Maine State Police who works with the U.S. Attorney's Violent Crime Task Force, was invited to participate in the search because Curtis is a felon and the officers believed a firearm would be found in his possession. MacMaster has authority to present cases for federal prosecution, but he is not a federal agent employed by a federal organization. At the time of the warrant's execution no decision had been made about whether to prosecute Curtis in federal court.

The search warrant and the affidavit in support of the warrant describe the premises to be searched as "the residence of Lawrence 'Buster' Curtis." In fact, Curtis does not own the residence, his father does. Neither the affiant nor any other law enforcement officer checked town tax maps or the registry of deeds to determine the ownership of the property. The warrant does contain an accurate and detailed physical description of the premises to be searched.

An inventory was prepared and returned to the state court following execution of the warrant. While there is some confusion between the inventory and the discovery provided to Curtis' counsel, it appears that the inventory accounts for all items seized with the exception of a gun case. The seized gun, which is listed on the inventory, was discovered in the gun case. Before seizing the gun, the officers inspected it but did not remove it from its case.

Discussion

1. Mistaken designation of property ownership

Pursuant to the Fourth Amendment "no warrants shall issue, but upon probable cause, . . . and particularly describing the place to be searched." This constitutional provision is meant to prevent wide-ranging general searches by the police. United States

v. Bonner, 808 F.2d 864, 866 (1st Cir. 1986). Accordingly, a description of the place to be searched must be "sufficient to enable the executing officer to locate and identify the premises with reasonable effort" and there must not be "any reasonable probability that another premise might be mistakenly searched." Id. (citations and internal quotation marks omitted) (holding that warrant was not defective even though the wrong street address was indicated because property was described with great particularity).

Curtis argues that the warrant to search his residence was defective because it describes the place to be searched as his property when, in fact, it is his father's property. (Motion to Suppress at ¶ 1.) The affidavit does describe the property as being the defendant's property. But it also describes it as "a white with blue trim two story cape with a detached blue garage" located in Strong, Maine, "approximately one-tenth of a mile on the left traveling north from the intersection of Chandler Road" and State Route 4. (Defendant's Motion to Suppress, Exhibit A.) Because "[t]here was no risk that federal agents would be confused and stumble into the wrong house, or would take advantage of their unforeseeable windfall and search houses indiscriminately," Bonner, 808 F.2d at 866-67, this ground fails to call the validity of the warrant into question.

2. Presence of Officer MacMaster during the search

> A federal court reviewing the sufficiency of a warrant issued by a state court, for the purpose of determining whether the fruits of a resulting search are lawful and hence admissible in a federal prosecution, must determine whether the warrant was issued as a federal warrant or as a state warrant. If the warrant was issued under authority of Rule 41 as a federal warrant clearly it must comply with the requirements of the rule. If, however, the warrant was issued under authority of state law then every requirement of Rule 41 is not a *sine qua non* to federal court use of the fruits of a search predicated on the warrant, even though federal officials participated in its procuration or execution. The products of a search conducted under the authority of a validly issued state warrant are lawfully obtained for federal prosecutorial purposes if that warrant satisfies

> constitutional requirements and does not contravene any Rule-embodied policy designed to protect the integrity of the federal courts or to govern the conduct of federal officers.

United States v. Krawiec, 627 F.2d 577, 580 n.4 (1st Cir. 1980) (quoting United States v. Sellers, 483 F.2d 37, 43 (11th Cir. 1973), cert. denied, 417 U.S. 908 (1974)). "The rule-embodied policy . . . is implemented primarily through the requirement that search warrants be issued by a 'neutral, detached officer capable of determining whether probable cause existed for the requested search.'" United States v. Soule, 908 F.2d 1032, 1040 (1st Cir. 1990) (quoting United States v. Mitro, 880 F.2d 1480, 1485-86 (1st Cir. 1989)).

Curtis argues that because MacMaster participated in the execution of the search warrant "[t]he warrant and its return should have complied with the requirements of the federal rules" as well as the state rules under which the warrant was issued. (Motion to Suppress at ¶ 2.) Curtis does not call into question the neutrality or detachment of the state court judge who issued the warrant. Nor does Curtis suggest that MacMaster ran the Curtis investigation or played any role in the acquisition of the search warrant whatsoever. Furthermore, MacMaster is not a federal agent, but a state agent who serves on the U.S. Attorney's Violent Crime Task Force. In light of these facts, no rule-embodied policy would be served by excluding evidence of the gun simply because the warrant was not returned to a federal magistrate who did not issue the warrant. Additionally, as discussed in the following section, Curtis does not raise a serious challenge to the state court judge's finding of probable cause.

3. Staleness of information regarding gun possession

A search warrant may issue only on a finding of probable cause. The probable cause standard requires that the totality of the circumstances reflected in a warrant and any supporting affidavit demonstrate "a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). This standard includes a temporal component; a magistrate's finding that there is probable cause to issue a search warrant cannot be based solely on "stale," or outdated, information. United States v. Watson, 423 U.S. 411, 450 n.14 (1976). Courts reviewing the propriety of a decision to issue a search warrant must grant "great deference" to the issuing judge's assessment of the supporting affidavit, United States v. Jewell, 60 F.3d 20, 22 (1st Cir. 1995), reversing only if there is no "'substantial basis for . . . concluding' that probable cause existed." Gates, 462 U.S. at 238-39.

Curtis argues that the warrant fails to demonstrate probable cause because the information relied upon, the statement of the interviewee regarding Curtis's ownership and possession of the gun, was stale. (Motion to Suppress at ¶ 3.) Quite to the contrary, the statement indicated that the gun was Curtis's, that it was kept in Curtis's residence, and that Curtis possessed the gun for at least the preceding two-year period. Moreover, the interviewee made the statement on February 19, 2001, two days before the warrant was issued. Based on this evidence of Curtis's enduring ownership and possession of the firearm and of the presence of the firearm at Curtis's residence since the last hunting season, the issuing judge was justified in concluding that there was a fair probability that the firearm would be discovered at Curtis's residence at the time the warrant issued. See United States v. Hershenow, 680 F.2d 847, 853 (1st Cir. 1982) ("Where the information

points to illegal activity of a continuous nature, the passage of several months between the observations in the affidavit and the issuance of the warrant will not render the information stale.").

4. Inventory dispute

Curtis complains that the inventory of items taken from his residence fails to include the case in which his firearm was located and a group of color photographs. (Motion to Suppress at ¶ 4.) The Government responds that it found the gun in the case and that its notation of the gun in the inventory should be understood to include the case. (Government's Opposition Memo at 10-11.) The Government has also informed the Court that the photographs are noted on the inventory as the "Search Warrant Photo Disk." (Id.) Because I discern no prejudice from the technical omission of "gun case" and "color photos" from the inventory, I see no basis for suppressing the firearm found at Curtis's residence. United States v. Cresta, 592 F. Supp. 889, 905 (D. Me. 1984) ("[I]t is well settled that, absent prejudice, an incomplete return does not require the suppression of evidence.").

Conclusion

Curtis raises a number of highly technical issues in his motion to suppress. None of the issues raised could possibly warrant the suppression of the firearm seized from his residence. Accordingly, I **RECOMMEND** that the Court **DENY** the motion to suppress.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten days of being served with a copy thereof. A responsive

memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated: August 28, 2001

_____
Margaret J. Kravchuk
U.S. Magistrate Judge

TRLLST

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 01-CR-25-ALL

USA v. CURTIS Filed: 05/15/01

Other Dkt # 1:01-m -00018

Case Assigned to: Judge GEORGE Z. SINGAL

LAWRENCE MILTON CURTIS, JR (1) JANET T. MILLS, Esq.

defendant [COR LD NTC ret]

WRIGHT & MILLS, P. O. BOX 9, SKOWHEGAN, ME 04976

207-474-3324

Pending Counts: Disposition

18:922G.F POSSESSION OF FIREARM AFTER CONVICTION OF A FELONY

(1)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints Disposition

18:922(g)(1) and 924(a)(2) - Felon in Possession of Firearm [1:01-m -18]

U. S. Attorneys:

GAIL FISK MALONE

MICHAEL D. LOVE, ESQ.

[term 06/05/01]

U.S. ATTORNEY'S OFFICE, P.O. BOX 2460, BANGOR, ME 04401